

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FILEMON ESQUIVEL, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230204

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230204 filed against Filemon Esquivel, Jr. The commission met again on July 11, 2003, to consider Sworn Complaint SC-230204. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 254.063 and 254.064 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent failed to file a 30-day pre-election report by the April 4, 2002, deadline; that the respondent failed to file an 8-day pre-election report by the April 26, 2002, deadline; and that the respondent failed to file a July 2002 semiannual report by the July 15, 2002, deadline. The complainant also alleges that a report the respondent filed on May 14, 2002, was not signed or notarized. The complainant also alleges that the respondent accepted political contributions from a labor organization and from a corporation.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent was an incumbent candidate for mayor in a city with a population of approximately 25,000 in a May 4, 2002, election. The respondent had an opponent on the ballot in the election.
2. The complainant submitted a copy of the respondent's appointment of a campaign treasurer, which was filed on April 4, 2002.
3. The respondent filed an affidavit in response to this complaint. He acknowledges the reporting violations and attributes them to his campaign treasurer's busy life.

4. The complainant submitted a copy of a report that the respondent filed on May 14, 2002, covering the period from April 4, 2002, through May 14, 2002. The report disclosed total political contributions in the amount of \$1,099.00 and total political expenditures in the amount of \$1,138.46. The signature and notarization block on the report were blank.
5. Before filing the report on May 14, 2002, the respondent had last filed a report covering the period ending on June 26, 2000.
6. On May 9, 2003, the respondent filed a report covering the period from May 1, 2002, through July 1, 2002. The report disclosed no activity.
7. On May 21, 2003, the respondent filed a report covering the period from March 19, 2002, through April 3, 2002. The report disclosed no activity.
8. On May 23, 2003, the respondent corrected the report that he had filed on May 14, 2002, by completing the signature block.
9. On June 5, 2003, the respondent filed a report covering the period from July 1, 2000, through April 3, 2002. The report disclosed no activity.
10. On June 19, 2003, the respondent filed a report covering the period from June 26, 2000, through June 30, 2000. The report disclosed no activity.
11. The complainant alleges that the respondent accepted a contribution from a labor organization. In his affidavit, the respondent states that after discussing contributions from labor organizations with Ethics Commission staff, he returned a \$99 contribution from the Kingsville Fire Fighters, Local 2390. He included a copy of his check for \$99 and a copy of the letter he sent with the check. The respondent also filed an affidavit in which he swore that he did not know that the acceptance of a contribution from labor organizations was prohibited.
12. The complainant alleges that the respondent accepted a contribution from a corporation. The report the respondent filed on May 14, 2002, lists a \$200 contribution from "Garco/J.F. Garcia." The respondent submitted an assumed name certificate showing that Garco was unincorporated.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Late Reports

1. A candidate who has an opponent on the ballot in an election must file a signed pre-election reports 30 days and 8 days before the election. Elec. Code §§ 254.063, 254.064. Because the respondent had an opponent on the ballot in the May 4, 2002, election, he was required to file a signed 30-day pre-election report by April 4, 2002, covering the period beginning on June

- 27, 2000,¹ and ending on March 25, 2002. He was required to file a signed 8-day pre-election report by April 26, 2002, covering the period from March 26, 2002 and ending on April 24, 2002.
2. The respondent did not satisfy the filing requirements for the 30-day pre-election report until June 19, 2003. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code by failing to file the 30-day pre-election report by the filing deadline.
 3. The respondent did not satisfy the reporting requirements for the 8-day pre-election report until May 23, 2003. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code by failing to file the 8-day pre-election report by the filing deadline.
 4. An individual who has a campaign treasurer appointment on file is required to file semiannual reports. Elec. Code § 254.063. Because the respondent had a campaign treasurer appointment on file during the period covered by the July 2002 semiannual report, he was required to file a July semiannual report covering a period beginning on April 25, 2002, and ending on June 30, 2002. *Id.* The respondent did not satisfy the filing requirements for the July 2002 semiannual report until May 9, 2003. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code by failing to file the July 2002 semiannual report by the filing deadline.

Acceptance of a Contribution from a Labor Organization

5. On the report he filed on May 14, 2002, the respondent reported a \$99 contribution from the Kingsville Fire Fighters, Local 2390.
6. A labor organization may not make a political contribution to a candidate. Elec. Code § 253.094. A candidate may not knowingly accept a political contribution that the candidate or officeholder knows was made in violation of Chapter 253 of the Election Code. Elec. Code § 253.003(b). In order to support a finding of a violation of 253.003(b) of the Election Code, the evidence must show that the respondent knew that contributions from labor organizations were illegal at the time he accepted the contribution. The respondent swears that, at the time he accepted the contribution, he did not know that contributions from labor organizations were illegal. Therefore, there is credible evidence that the respondent did not violate section 253.003(b) of the Election Code.²

Acceptance of a Corporate Contribution

7. The complainant also alleges that the respondent accepted a political contribution from a corporation. The respondent submitted an assumed name certificate showing that Garco is

¹ The period began on the day after the last day covered by the respondent's last required report.

² The evidence is unclear as to whether the contribution was from a labor organization or from a political committee affiliated with a labor organization.

not a corporation. The Secretary of State's Office confirmed that Garco is not a corporation. Thus, there is credible evidence that the respondent did not violate section 253.003(b) of the Election Code by accepting a corporate contribution.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a candidate who has an opponent on the ballot in an election must file pre-election reports 30 days and 8 days before the election. The respondent acknowledges that an individual who has a campaign treasurer appointment on file is required to file semiannual reports by January 15 and July 15 each year. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 2, 3, and 4, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under section 571.140 of the Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

The commission imposes a \$400 civil penalty for the violations described under Section IV, Paragraphs 2, 3, and 4.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;

- 2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-230204;
- 3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$400 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 8, 2003; and
- 4. that the executive director shall set SC-230204 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230204 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 20__.

Filemon Esquivel, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director